

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF OHIO
4 WESTERN DIVISION
5
6

7 WALTER W. THIEMANN, :
On Behalf of Himself :
8 And of All Others :
Similarly Situated, :
9 :
Plaintiff, :

10 VS. : CASE NO. C-1-00-793
11 :

OHSL FINANCIAL :
12 CORPORATION, et al., :
13 Defendants. :
14

15 Deposition of ~~JOHN~~ WINSTEAD, ESQ., a
16 witness herein, called by the plaintiff for
17 cross-examination pursuant to the Federal Rules
18 of Civil Procedure, taken before me, Lee Ann
19 Williams, a Registered Professional Reporter
20 and Notary Public in and for the State of Ohio,
21 at the offices of Gene Mesh & Associates, 2605
22 Burnet Avenue, Cincinnati, Ohio 45219, on
23 Tuesday, August 19, 2003, at 10:58 a.m.
24
25

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1 APPEARANCES:

2 On behalf of the Plaintiff:

3 Gene I. Mesh, Esq.
and4 Michael G. Brautigam, Esq.
Gene Mesh & Associates
2605 Burnet Avenue
Cincinnati, Ohio 45219

6 On behalf of the Defendant:

7 Rachael A. Rowe, Esq.
Keating, Muething & Klekamp
1400 Provident Tower
One East Fourth Street
Cincinnati, Ohio 45202

10 On behalf of the Defendant:

11 Dennis Buckley, Esq.
Schroeder, Maundrell, Barbieri
& Powers
110 Governor's Knoll
11935 Mason Road
Cincinnati, Ohio 45249

15 On behalf of the Witness:

16 Patrick F. Fischer, Esq.
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1400 Provident Tower
One East Fourth Street
Cincinnati, Ohio 45202

19 ---

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1 MR. BRAUTIGAM: Good morning, Mr.
2 Winstead. My name is Michael G. Brautigam and
3 I represent Walter Thiemann and a class of OHSL
4 shareholders. Counsel, would you give your
5 appearance, please.

6 MR. FISCHER: Patrick Fischer.

7 MR. BRAUTIGAM: And you represent?

8 MR. FISCHER: Mr. Winstead.

9 MS. ROWE: Rachel Rowe, I'm here
10 on behalf of Provident and the OHSL defendants.11 MR. BUCKLEY: Dennis Buckley,
12 Dinsmore & Shohl.

13 * * *

14 JOHN WINSTEAD, ESQ.
15 having been first duly sworn, testified as
16 follows:

17 CROSS-EXAMINATION

18 BY MR. BRAUTIGAM:

19 Q. Mr. Winstead, are you represented
20 by counsel today?

21 A. Yes.

22 Q. Who is your counsel?

23 A. Pat Fischer.

24 Q. And how did Mr. Fischer come to
25 represent you?

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1 INDEX

2 Examination of JOHN WINSTEAD, ESQ.

3 By Mr. Brautigam: 4 Page

4 ---

5 Defendant's Exhibit Page Identified

6 No. 40 19

7 No. 41 52

8 No. 42 160

9 ---

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1 A. He is counsel for KMK.

2 Q. Are you paying Mr. Fischer?

3 A. Personally I'm not paying Mr.
4 Fischer.5 Q. Okay. Are you billing your time
6 for today's appearance?

7 A. No.

8 Q. Do you consider today's deposition
9 important?10 A. In the sense that it's a legal
11 obligation to appear, yes, it's important.12 Q. What, if anything, did you do to
13 prepare for this deposition?14 A. I had conversations with my
15 counsel, Mr. Fischer.16 Q. Okay. Did you ever talk to anyone
17 else at KMK about the fact of the litigation
18 arising from the OHSL-Provident merger?19 MR. FISCHER: Objection, asking
20 for communications that are privileged. Don't
21 answer that question.22 MR. BRAUTIGAM: Excuse me, how are
23 these communications privileged? Apparently
24 you're his attorney, therefore Mr. Burke, Ms.
25 Rowe, et cetera, are not his attorneys.

2 (Pages 2 to 5)

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1 MR. FISCHER: Yes, same law firm.
 2 BY MR. BRAUTIGAM:
 3 Q. Do you consider Mr. Burke to be
 4 your attorney in this matter?
 5 A. No.
 6 Q. Do you consider Ms. Rowe to be
 7 your attorney in this matter?
 8 A. No.
 9 Q. Do you consider anyone other than
 10 Mr. Fischer to be your attorney in this matter?
 11 A. Mr. Fischer is representing me in
 12 this deposition.
 13 Q. Okay. Did you ever talk to Mr.
 14 Burke at any time about the OHSL-Provident
 15 merger and the litigation that arose therefrom?
 16 MR. FISCHER: Same instruction.
 17 Do not answer that question. You're asking for
 18 contents of communications.
 19 MR. BRAUTIGAM: What's the basis
 20 for the instruction?
 21 MR. FISCHER: Privilege.
 22 MR. BRAUTIGAM: What type of
 23 privilege?
 24 MR. FISCHER: Privilege. Both
 25 attorney-client privilege and the work product

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1 Q. Have you ever spoken with Mr.
 2 Burke at all ever?
 3 A. Yes.
 4 Q. Have you ever spoken to Mr. Burke
 5 about the OHSL-Provident litigation? Can you
 6 answer that question yes or no?
 7 MR. FISCHER: You can answer it
 8 only to the extent that you do not disclose the
 9 actual communications between you and Mr.
 10 Burke. The generalized subject matter that you
 11 discussed you can mention, but you cannot
 12 discuss any direct communication.
 13 A. The answer is yes.
 14 Q. Okay. Have you spoken to Ms. Rowe
 15 about the generalized subject matter of this
 16 litigation?
 17 A. Yes.
 18 Q. Have you spoken to Mr. Ramsey
 19 about the generalized subject matter of this
 20 litigation?
 21 A. No.
 22 Q. Okay. Have you spoken to anyone
 23 else about the generalized subject matter of
 24 this litigation?
 25 A. Yes.

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1 doctrine.
 2 MR. BRAUTIGAM: I believe he can
 3 answer as to whether or not he spoke to Mr.
 4 Burke and others about -- without getting into
 5 the content. Do you agree with that?
 6 MR. FISCHER: You can ask him if
 7 he ever spoke with Mr. Burke.
 8 MR. BRAUTIGAM: I think that was
 9 my question.
 10 MR. FISCHER: No, it was not. You
 11 gave what content he had discussed with him.
 12 MR. BRAUTIGAM: Can we have the
 13 question read back?
 14 (Record read by Reporter.)
 15 MR. FISCHER: Exactly.
 16 BY MR. BRAUTIGAM:
 17 Q. Can you answer that question?
 18 MR. FISCHER: Don't answer.
 19 A. On counsel's instruction --
 20 MR. BRAUTIGAM: You're instructing
 21 him not to answer yes or no?
 22 MR. FISCHER: That question. You
 23 can rephrase it and make it so you can get an
 24 answer.
 25 BY MR. BRAUTIGAM:

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1 Q. Who else have you spoken with?
 2 A. I have spoken with my department
 3 chairman, Tim Matthews.
 4 Q. Okay. What did you say to Mr.
 5 Matthews?
 6 MR. FISCHER: Objection. Don't
 7 answer that question.
 8 MR. BRAUTIGAM: What's the basis?
 9 MR. FISCHER: You're going to ask
 10 for communications between lawyers who were
 11 giving rendition of legal services. It's not
 12 going to happen.
 13 MR. BRAUTIGAM: The fact that Mr.
 14 Matthews happens to be a lawyer is irrelevant.
 15 This is an improper attempt to use the
 16 privilege.
 17 MR. FISCHER: He's the same law
 18 firm.
 19 BY MR. BRAUTIGAM:
 20 Q. When you spoke to Mr. Matthews,
 21 were you giving or seeking legal advice with
 22 respect to this litigation?
 23 MR. FISCHER: Objection. Don't
 24 answer that question.
 25 MR. BRAUTIGAM: Don't answer that?

3 (Pages 6 to 9)

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1 What's the basis for that?
 2 MR. FISCHER: You're trying to get
 3 around the privilege, Mr. Brautigam.
 4 MR. BRAUTIGAM: There's no
 5 privilege here.
 6 MR. FISCHER: Yes, there is.
 7 BY MR. BRAUTIGAM:
 8 Q. Do you consider Mr. Matthews to be
 9 your attorney?
 10 A. My attorney today at the
 11 deposition is Mr. Fischer.
 12 Q. Did you ever consider Mr. Matthews
 13 to be your attorney?
 14 A. In the context of this deposition,
 15 Mr. Fischer is my attorney.
 16 Q. Did you ever consider Mr. Matthews
 17 to be your attorney with respect to this
 18 litigation?
 19 MR. FISCHER: Objection. Go
 20 ahead. You can answer that.
 21 A. With respect to this litigation,
 22 no.
 23 Q. Okay. Did you ever seek or --
 24 seek legal advice from Mr. Matthews?
 25 MS. ROWE: Objection.

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1 work product.
 2 MR. BRAUTIGAM: What's the
 3 privilege? He just said that he did not
 4 consider Mr. Matthews ever to be his attorney.
 5 He was not giving or seeking legal advice.
 6 Therefore, there's no privilege.
 7 MR. FISCHER: Discussions between
 8 two attorneys at a law firm for rendition of
 9 legal services to a client are privileged
 10 communications.
 11 BY MR. BRAUTIGAM:
 12 Q. When you spoke to Mr. Matthews,
 13 were you contemplating the rendering of legal
 14 services to a client?
 15 A. Yes.
 16 Q. Who was that client?
 17 A. Provident Bank.
 18 Q. Did you bill for this time?
 19 A. No.
 20 Q. Is that atypical?
 21 A. I'm not sure I understand that
 22 question.
 23 Q. When you consult with another
 24 attorney for the purposes of rendering legal
 25 advice to a client, you bill for your time,

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1 MR. FISCHER: Repeat the question.
 2 Repeat the question.
 3 A. On the advice of my counsel, I'm
 4 careful not to go too far in the conversation,
 5 but with respect to the subject matter of this
 6 litigation, I did not speak with Mr. Matthews
 7 regarding any answers to questions I would be
 8 giving.
 9 Q. Mr. Winstead, I'm afraid my
 10 question was a little different. When you
 11 spoke to Mr. Matthews, were you giving or
 12 seeking legal advice?
 13 A. No.
 14 Q. Okay. Please tell me what you
 15 said and what Mr. Matthews said.
 16 MR. FISCHER: Objection. Don't
 17 answer that question.
 18 MR. BRAUTIGAM: It seems to me
 19 that the various KMK lawyers here are making a
 20 mockery of the privilege. This is improper.
 21 Your representation is improper. He should
 22 answer that question.
 23 What's the basis? Please state
 24 the basis once again.
 25 MR. FISCHER: Privilege and/or

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1 correct?
 2 A. No.
 3 Q. You don't?
 4 A. Not always.
 5 Q. Okay. In what circumstances do
 6 you bill and in what circumstances do you not
 7 bill?
 8 A. There are various instances where
 9 time would not be billed.
 10 Q. Okay. Why did you not bill time
 11 with respect to this particular communication?
 12 MS. ROWE: Objection.
 13 MR. FISCHER: If you can answer
 14 that question without revealing communications
 15 in regard to the rendition of legal services,
 16 you can answer. If you can't, then don't
 17 answer the question. Can you read back the
 18 question, please?
 19 (Record read by Reporter.)
 20 MR. FISCHER: Same instruction.
 21 THE WITNESS: Instruction not to
 22 answer or only answer --
 23 MR. FISCHER: If you can answer
 24 without revealing communications that were used
 25 in the rendition of legal services.

4 (Pages 10 to 13)

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1 A. Mr. Matthews is the chairman of my
2 practice group. I have to make him aware of
3 when I'm in the office and out of the office.
4 I've had a conversation with Mr. Matthews
5 regarding my appearance today and the context
6 of my availability to work on other
7 transactions, my availability or lack of
8 availability in the office.

9 Q. Okay. Mr. Winstead, you worked on
10 the OHSL-Provident merger, correct?

11 A. Yes.

12 Q. And when you worked on the merger,
13 you billed for your time, correct?

14 A. Yes.

15 Q. And at some point in 1999, did you
16 learn that there had been a lawsuit filed in
17 state court in an attempt to stop the merger?

18 A. I don't recall knowledge of any
19 lawsuit in 1999.

20 Q. Okay. Did you subsequently learn
21 of the Thiemann litigation, the subject matter
22 that brings us here today?

23 A. Yes.

24 Q. When did you learn of the Thiemann
25 action?

Page 15

1 A. I don't recall.

2 Q. Would it be fair to say that it
3 was in the fall of 2000?

4 MS. ROWE: Objection.

5 A. I don't recall.

6 Q. Okay. When you learned of the
7 Thiemann action, what was your reaction to it?

8 MR. FISCHER: Objection.

9 A. I don't recall having any specific
10 reaction.

11 Q. How did you learn of the Thiemann
12 action?

13 MR. FISCHER: To the extent you
14 can answer that without revealing
15 communications that were giving a rendition of
16 legal services, you can answer to the extent
17 you recall. For communications in the
18 rendition of legal services, do not answer that
19 question.

20 A. I recall seeing mention of this
21 litigation in perhaps the Cincinnati Enquirer
22 or the Business Courier, but I don't recall
23 which publication.

24 Q. Did you read this on your own or
25 did someone bring it to your attention?

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1 A. I don't recall anyone bringing
2 this to my attention.

3 Q. Okay. After you read this article
4 in the Cincinnati Business Courier, what was
5 your reaction to it?

6 MR. FISCHER: Objection. Wasting
7 time on an irrelevant question.

8 A. As I stated before, I don't recall
9 any specific reaction to the presence of this
10 litigation.

11 Q. Okay. After you learned of the
12 fact of the litigation, did you ever speak to
13 Mr. Burke about the fact of the litigation?

14 MR. FISCHER: Objection. If you
15 can answer that question without revealing
16 communications giving the rendition of legal
17 services, you can answer. If it's -- if you
18 can only answer concerning communications
19 involved in the rendition of legal services, do
20 not answer.

21 A. I recall a conversation with Mr.
22 Burke regarding that I may be called as a
23 witness in the litigation.

24 Q. When did that conversation take
25 place?

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1 A. I don't recall.

2 Q. Was it in 2003?

3 MS. ROWE: Object.

4 MR. FISCHER: Objection.

5 A. Yes.

6 Q. Did you ever speak to Mr. Burke
7 earlier about the litigation?

8 A. To my --

9 MR. FISCHER: Objection. Same
10 instruction.

11 A. To my knowledge, no.

12 Q. Okay. Did you ever speak to Mr.
13 Matthews about the litigation in 2000?

14 MR. FISCHER: Same instruction.

15 A. It's my recollection no.

16 Q. In 2001?

17 MR. FISCHER: Same instruction.

18 A. To my recollection, no.

19 Q. In 2002?

20 MR. FISCHER: Same instruction.

21 A. To my recollection, no.

22 Q. Was there ever a time where you
23 were told to preserve any documents that you
24 may have had related to the Oak Hills-Provident
25 merger?

5 (Pages 14 to 17)

Page 18

1 MR. FISCHER: Objection. Same
2 instruction.

3 A. To my recollection, no.

4 Q. Did you create documents during
5 your work on the OHSL-Provident merger?

6 A. I don't recall any specific
7 documents.

8 Q. Did you ever take notes regarding
9 the OHSL-Provident merger?

10 A. I don't recall any specific notes.

11 Q. Did you ever send an e-mail?

12 A. Yes.

13 Q. Okay. Where are those e-mails?

14 A. I don't know.

15 Q. Were you ever asked to produce
16 them?

17 MR. FISCHER: Objection.

18 A. No.

19 Q. Okay. You mentioned that you
20 don't recall any specific documents that you
21 created or any specific notes that you took.
22 Is that your testimony?

23 A. I don't recall creating any
24 specific documents or any specific notes that I
25 took, that is correct.

Page 20

1 has been marked as Plaintiff's Deposition

2 Exhibit 40 and I ask you to take a look at it.

3 Mr. Winstead, with this document or any other
4 document, please take as much time as you need
5 to look at the document to your satisfaction.

6 In most cases I think I can successfully direct
7 your attention to what I'm interested in doing.

8 Mr. Winstead, have you seen Plaintiff's
9 Deposition Exhibit 40 before?

10 A. No.

11 Q. Were you aware, generally
12 speaking, of its existence?

13 MR. FISCHER: Same instruction.

14 If you know from outside communications with
15 counsel, you can answer that question. If you
16 know just from communications with counsel, do
17 not answer that question.

18 A. I have no recollection of any
19 knowledge of this lawsuit.

20 Q. So it would be fair to say that
21 you were never asked to preserve any documents
22 that may be relevant to the lawsuit, is that
23 correct?

24 MR. FISCHER: Objection.

25 A. I have no recollection of being

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1 Q. Okay. Generally, do you recall
2 taking notes?

3 A. I don't recall taking any specific
4 notes regarding this transaction. I worked on
5 the transaction, it would be my expectation
6 that I would have taken notes.

7 Q. Where are those notes?

8 A. I don't know.

9 Q. Were you ever asked to produce
10 those notes?

11 MR. FISCHER: Objection.

12 A. No.

13 Q. Did you ever learn that KMK had
14 been sued in any related litigation?

15 A. No.

16 MR. FISCHER: Objection.

17 Q. As you sit here today, are you
18 unaware that KMK is a defendant in what's known
19 as the Meier action?

20 MR. FISCHER: Don't answer that
21 question. The only way he knows -- would know
22 is from communications from counsel.

23 (Plaintiff's Exhibit Number 40
24 was marked for identification.)

25 Q. Mr. Winstead, I'm handing you what

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1 asked to produce or preserve any documents with
2 respect to the matter placed in front of me,
3 Gary and Lisa Meier, and Gary Meier C-F Lindsey
4 Meier versus OHSL Financial Corp and various
5 other defendants.

6 MR. FISCHER: Just for the record,
7 the documents handed to us were not the same as
8 the exhibit shown to Mr. Winstead. Mr.
9 Winstead has a different document in front of
10 him than what's been handed out, just for the
11 record.

12 Q. Thank you. All right. Do you see
13 the caption there, sir?

14 A. Which caption, sir?

15 Q. The caption in the complaint.

16 A. Plaintiffs versus defendants
17 caption?

18 Q. Yes.

19 A. Yes. I see that in front of me.

20 Q. Okay. Do you see that KMK is
21 listed there as a defendant?

22 A. Reading through the caption for
23 the first time, I see on the second to the last
24 line, Keating, Muething & Klekamp.

25 Q. And they're listed as defendants,

6 (Pages 18 to 21)

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1 correct?

2 A. That appears to be correct.

3 Q. You're an attorney, correct?

4 A. Yes.

5 Q. Does it strike you as unusual that
6 you were not asked to retain documents that
7 related to litigation where KMK was a
8 defendant?

9 MR. FISCHER: Objection.

10 A. I have no opinion whether it's
11 unusual or usual. I'm -- I have no
12 recollection of being asked to preserve or
13 produce any documents.

14 Q. Okay. Do you understand that when
15 an entity is sued in litigation, that they have
16 an obligation to preserve and produce documents
17 as requested? Correct?

18 MR. FISCHER: Are you asking him
19 for his legal opinion? Objection. Are you
20 going to ask him for his legal opinion?

21 MR. BRAUTIGAM: You've made your
22 objection. I think he understands the
23 question, that's fine.

24 MR. FISCHER: No, because if
25 you're asking for his legal opinion, Mr.

1 produced, should or should not be preserved.

2 It would depend upon the circumstances of any
3 particular litigation.

4 Q. Is it really your testimony that
5 you're unaware that documents should be
6 preserved when an entity is named as a
7 defendant in a lawsuit?

8 MR. FISCHER: Same objection,
9 badgering the witness.

10 A. My understanding of the Rules of
11 Civil Procedure on this matter is that in
12 certain circumstances documents should be
13 preserved. In certain circumstances documents
14 should be produced.

15 Q. Okay. I'm --

16 A. Beyond that very limited, basic
17 knowledge, I'm not an expert on when and where
18 documents should be preserved or the rules
19 governing that.

20 Q. Okay. But as an attorney, it
21 would stand to reason that documents should be
22 preserved when an entity such as KMK is named
23 in litigation, correct?

24 MR. FISCHER: Same objection.

25 A. I think there are hypothetical

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1 Brautigam, you should have to pay him. He's
2 not named as an expert. He's here as a fact
3 witness.

4 BY MR. BRAUTIGAM:

5 Q. Can you answer my question, sir?

6 MR. FISCHER: Objection,
7 hypothetical.

8 A. Would you repeat your question,
9 please?

10 Q. Yes. Is it your understanding as
11 an attorney that when an entity is named as a
12 defendant in litigation, that that entity has
13 an obligation to preserve and produce documents
14 when requested?

15 MR. FISCHER: Same objection.

16 A. My area of practice is corporate
17 transactional law. Is it -- my response to
18 your question would be that I'm sure that the
19 Rules of Civil Procedure govern when and to
20 what extent documents are to be produced and
21 not produced.

22 I'm not an expert in that area. I
23 have no real knowledge in that area, so I can't
24 say whether any -- in any particular
25 circumstance documents should or should not be

1 circumstances when documents would be required
2 to be produced. There are circumstances when
3 documents would not be required to be produced.

4 Again, this is not my area of practice. I
5 don't have any specialized knowledge of these
6 rules.

7 Q. Okay. Mr. Winstead, I'm not
8 asking for specialized knowledge. I'm asking
9 the situation like this where KMK has been
10 named as a defendant, do you believe that KMK
11 should preserve documents relative to the
12 litigation?

13 MR. FISCHER: Same objection.

14 MS. ROWE: Objection.

15 MR. FISCHER: We're going over the
16 same stuff over and over. This is ridiculous,
17 waste of time.

18 A. Again, my answer is in any
19 particular litigation, what would and would not
20 be required to be produced I believe would
21 vary. I have no knowledge of this particular
22 litigation or the circumstances or what
23 documents should or should not be produced.

24 Q. Right. And to summarize, you
25 believe that you sent e-mails related to the

7 (Pages 22 to 25)

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1 OHSL-Provident merger, correct?

2 A. My testimony is that with respect
3 to this transaction, I do not have any
4 recollection of any specific e-mails, but I do
5 believe that sending e-mails was a part of what
6 I did on this transaction.

7 Q. And without any specific
8 recollection of taking notes, you believe that
9 you took notes, correct?

10 MR. FISCHER: Same objection.
11 That wasn't his testimony.

12 A. My recollection is that in working
13 on this transaction, I took or would have taken
14 notes. I have no knowledge of any specific
15 notes that I took when working on this
16 transaction.

17 Q. Right. And you don't know where
18 those notes are today, correct?

19 A. I have no knowledge of where any
20 of those notes are today.

21 MS. ROWE: Objection.

22 MR. FISCHER: Objection, I was
23 going to say, he hasn't testified to any.

24 Q. And you don't know where the
25 e-mails are today, correct?

1 seeking or receiving legal advice?

2 MR. FISCHER: Same instruction.
3 If you can answer that question without
4 revealing communications for the rendition of
5 legal services, you can answer. If you can't,
6 then don't answer the question.

7 A. No.

8 Q. Okay. Please tell me what you
9 said to Mr. Kreider about the OHSL-Provident
10 merger and what he said to you about --

11 MR. FISCHER: Objection. If you
12 can answer the question without discussing
13 communications for the rendition of legal
14 services, you can answer. If you can't, don't
15 answer the question.

16 A. Could you repeat your question?

17 Q. Certainly. You have testified
18 that you spoke with Mr. Kreider about the
19 OHSL-Provident merger. You further testified
20 that it was not giving or seeking legal advice.
21 So what did you talk about? What did Mr.
22 Kreider say and what did you say?

23 MR. FISCHER: Objection, multiple
24 questions. Improper form.

25 A. Perhaps you could start it back at

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Page 29

1 MS. ROWE: Objection, form.

2 MR. FISCHER: He didn't testify
3 about any specific e-mails.

4 A. I have no knowledge of where any
5 e-mails, if any e-mails, are at.

6 Q. And to the best of your
7 recollection, no one asked you to produce or
8 preserve these notes in e-mails, correct?

9 MR. FISCHER: Same objection.
10 We're repeating ourselves again, Mr. Brautigam.

11 MS. ROWE: Objection.

12 A. To the best of my recollection, I
13 don't recall any request to preserve or produce
14 any e-mails.

15 Q. Okay. Did you ever speak to Gary
16 Kreider about the fact of this litigation?

17 MR. FISCHER: Don't answer that
18 question.

19 MR. BRAUTIGAM: And what's the
20 basis for that instruction?

21 MR. FISCHER: Same instruction.

22 BY MR. BRAUTIGAM:

23 Q. Okay. Let me ask it a different
24 way. Did you ever speak to Mr. Kreider about
25 the OHSL-Provident merger where you were

1 your original series of questions. I believe
2 you misunderstood my "no" when you asked me if
3 I had spoken to Mr. Kreider regarding -- I
4 don't want to give your question back in the
5 wrong form, but --

6 Q. Certainly. You spoke to Mr.
7 Kreider about the OHSL-Provident merger,
8 correct?

9 MR. FISCHER: Objection. To the
10 extent you can answer that question without
11 revealing communications for the rendition of
12 legal services, you can answer. If you can't,
13 don't answer the question.

14 A. My response to your -- that
15 question is no. That was my intended no
16 before.

17 Q. Did you ever talk to Mr. Kreider
18 about the fact of this litigation?

19 MR. FISCHER: Don't answer that
20 question. Same instruction.

21 MR. BRAUTIGAM: I believe he can
22 answer it yes or no.

23 MR. FISCHER: Answer -- so what?

24 BY MR. BRAUTIGAM:

25 Q. Can you answer that question yes

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1 or no? Did you ever speak to Mr. Kreider about
2 the fact of this litigation?

3 MR. FISCHER: If you can reveal --
4 answer that question without revealing
5 communications for the rendition of legal
6 services, go ahead. If you can't, don't.

7 A. No.

8 Q. Okay. Did you ever speak to J.
9 David Rosenberg about the fact of this
10 litigation?

11 MR. FISCHER: Same instruction.

12 A. No.

13 Q. Did you ever speak to Mark Reuter
14 about the fact of this litigation?

15 MR. FISCHER: Same instruction.

16 A. Yes.

17 Q. Okay. When you spoke to Mr.
18 Reuter about the fact of this litigation, was
19 it for the purpose of giving or seeking legal
20 advice?

21 MR. FISCHER: I instruct you if
22 these discussions were held with counsel, don't
23 answer that question.

24 A. I've been instructed by my counsel
25 not to answer that question.

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1 with Mr. Fischer?

2 A. Yes.

3 Q. Okay. Please tell me what was
4 said in those discussions.

5 MR. FISCHER: Don't answer that
6 question. Instruction, privileged, and work
7 product.

8 MR. BRAUTIGAM: Can you please
9 explain to me the basis of the privilege?

10 MR. FISCHER: Yes. For the
11 rendition of legal services.

12 MR. BRAUTIGAM: Okay.

13 MR. FISCHER: And also work
14 product.

15 MR. BRAUTIGAM: Fine.

16 MR. FISCHER: Don't answer it.

17 BY MR. BRAUTIGAM:

18 Q. Mr. Winstead, when you were in the
19 room with Jim Burke, Mr. Fischer and Mark
20 Reuter, did you consider Mr. Burke to be your
21 attorney?

22 A. I don't think that's an accurate
23 rendition of what I -- my testimony was.

24 Q. Okay. Please correct it.

25 MR. FISCHER: Objection. It's not

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1 Q. Is that because these discussions
2 were held with counsel?

3 A. I've been instructed by my counsel
4 not to answer --

5 MR. FISCHER: You can answer that
6 question.

7 A. I'm sorry, could you repeat the
8 question?

9 Q. Is that because these discussions
10 were held with counsel?

11 A. Yes.

12 Q. Who was in the room when these
13 discussions took place?

14 MR. FISCHER: Yeah. You can
15 answer that.

16 A. Mark Reuter.

17 Q. Okay.

18 A. Pat Fischer.

19 Q. Okay.

20 A. And myself.

21 Q. Okay. Did you ever have any
22 discussions where Dan Donnellon was in the room
23 with Mr. Fischer?

24 A. No.

25 Q. When Jim Burke was in the room

Page 33

1 his question.

2 A. I did not testify that I was ever
3 in a meeting with Mr. Burke, Mr. Fischer, Mr.
4 Reuter and myself.

5 Q. Okay. Were you ever in a meeting
6 with Mr. Fischer, Mr. Burke and yourself?

7 A. Yes.

8 Q. Was there anyone else in the
9 meeting?

10 A. Yes.

11 Q. Who was in the meeting?

12 A. Mr. Fischer, Mr. Burke, Mr.
13 Matthews, Mr. Tim Matthews, Mr. Mark Reuter,
14 Mr. Mark Weiss, Ms. Rachael Rowe.

15 Q. Okay. In this meeting, did you
16 consider Ms. Rowe to be your counsel?

17 A. No.

18 Q. Okay. Please tell me what was
19 said at this meeting.

20 MR. FISCHER: Objection. Don't
21 answer that question.

22 MR. BRAUTIGAM: And the basis for
23 that?

24 MR. FISCHER: Privilege and work
25 product.

9 (Pages 30 to 33)

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1 BY MR. BRAUTIGAM:
 2 Q. Okay. Were you seeking legal
 3 advice from Ms. Rowe?
 4 A. No.
 5 Q. Were you billing for your time?
 6 A. No.
 7 Q. Was this meeting in conjunction
 8 with rendering legal services to your clients?
 9 A. I'm not sure I understand the
 10 question.
 11 Q. Was the purpose of the meeting to
 12 provide knowledge to you so that you could
 13 better serve your clients?
 14 MR. FISCHER: Objection. That's
 15 not the rendition of legal services.
 16 A. Again, I'm not clear what
 17 rendition of legal services does or does not
 18 mean.
 19 Q. Well, sir, you're in the business
 20 of rendering legal services, correct?
 21 A. Yes.
 22 Q. So you know what it means,
 23 correct?
 24 A. I believe it could mean different
 25 things in different contexts. The meeting in

1 privilege goes with the law firm.
 2 MR. BRAUTIGAM: Okay. We'll see
 3 about that.
 4 BY MR. BRAUTIGAM:
 5 Q. During this meeting, did you
 6 consider Mr. Burke to be your counsel?
 7 A. No.
 8 Q. Okay. You were not seeking legal
 9 advice from Mr. Burke, correct?
 10 MR. FISCHER: If you can answer
 11 without revealing communications.
 12 A. Could you repeat the question,
 13 please?
 14 Q. You were not seeking legal advice
 15 from Mr. Burke at this meeting, correct?
 16 A. No.
 17 Q. Okay. You were not billing for
 18 your time at this meeting, correct?
 19 A. That is correct. I was not
 20 billing for my time.
 21 Q. How long did this meeting last?
 22 A. I don't recall.
 23 Q. Okay. You testified that Mr.
 24 Matthews was at the meeting as well, correct?
 25 A. Yes.

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Page 37

1 which Ms. Rowe was present was not a social
 2 occasion, if that's what you mean by rendering
 3 legal services.
 4 Q. It was a business meeting,
 5 correct?
 6 MR. FISCHER: Objection.
 7 A. It was a meeting for professional
 8 purposes.
 9 Q. Okay. And what were the
 10 professional purposes for the meeting?
 11 A. I was meeting with my counsel --
 12 MR. FISCHER: Don't discuss what
 13 was discussed at the meeting.
 14 MR. BRAUTIGAM: Look, if he's
 15 meeting with someone he considers to be his
 16 counsel, and there are others who are not his
 17 counsel, that destroys the privilege.
 18 MR. FISCHER: No, it does not.
 19 MR. BRAUTIGAM: The fact that it
 20 happened to be KMK attorneys is irrelevant.
 21 MR. FISCHER: No, it does not
 22 destroy the privilege.
 23 MR. BRAUTIGAM: Why does it not
 24 destroy the privilege? Please educate me.
 25 MR. FISCHER: Because the

1 Q. He was not representing you at the
 2 meeting, correct?
 3 A. That is correct.
 4 Q. You were not seeking legal advice
 5 from Mr. Matthews at this point, correct?
 6 A. No.
 7 Q. Okay. You testified that Mr.
 8 Reuter was at this meeting, correct? You did
 9 not consider him to be your attorney, correct?
 10 A. That is correct.
 11 Q. And you were not seeking legal
 12 advice from Mr. Reuter, correct?
 13 A. That is correct.
 14 Q. Okay. You were not seeking legal
 15 advice from Mr. Weiss at this meeting, correct?
 16 A. That is correct.
 17 Q. And you did not consider Mr. Weiss
 18 to be your attorney, correct?
 19 A. That is correct.
 20 Q. Did you ever learn from any source
 21 that Mr. Weiss had been named a defendant in
 22 litigation arising from the OHSU-Provident
 23 merger?
 24 MR. FISCHER: Objection. Outside
 25 of conversations with counsel. If you learned

10 (Pages 34 to 37)

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1 from -- only from counsel, then don't answer
2 that question.

3 A. I don't recall any knowledge of
4 Mr. Weiss being made a party to any lawsuit
5 outside of conversations with my counsel.

6 Q. Okay. Since February 4th of 2001,
7 have you spoken to Mr. Weiss in the hallways
8 and things?

9 A. Yes.

10 Q. Did he ever mention to you that he
11 personally had been sued with respect to the
12 OHSL-Provident merger?

13 A. Not to my recollection.

14 Q. Okay. Did you ever talk to anyone
15 about the OHSL-Provident merger after February
16 4th of 2001?

17 MR. FISCHER: Same --

18 Q. Excuse me, 2002.

19 MR. FISCHER: Don't answer
20 anything about communications with counsel.

21 A. I don't recall.

22 Q. Okay. Mr. Winstead, is it your
23 position that if you saw Mark Reuter in the
24 hall and you talked to him about the OHSL
25 litigation, that that's a privileged

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1 Reuter in the hallway at KMK, is it your
2 understanding that your counsel is taking the
3 position that that is a privileged
4 communication if you spoke about the
5 OHSL-Provident merger?

6 MR. FISCHER: Same objection.
7 Haven't taken that position at this deposition.

8 A. Beyond my testimony here, what my
9 counsel has provided on the record, I don't
10 have any position or knowledge with respect to
11 which conversations are privileged and which
12 are not privileged. I rely on my counsel to
13 tell me what he considers the proper legal
14 interpretation.

15 Q. Well, Mr. Fischer, with respect to
16 that scenario, he talked to Mr. Reuter, let's
17 say, about the litigation, about the merger in
18 the hallway?

19 MR. FISCHER: Without me present?

20 Q. Right. Without you present. Is
21 that a privileged communication?

22 MR. FISCHER: Probably not.

23 Q. Okay. Did you ever have
24 conversations like that with Mr. Reuter?

25 MR. FISCHER: And let me --

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1 communication? Is that your position?

2 A. That's the -- I would defer on
3 that question to any preference my counsel has
4 or the position of my counsel. Mr. Fischer is
5 representing me with respect to those matters.

6 Q. Is that your understanding with
7 respect to the official KMK party line?

8 MR. FISCHER: Objection.

9 MS. ROWE: I object to that
10 question also.

11 A. I'm unaware of any official or
12 unofficial KMK party line.

13 Q. Okay. But is it your
14 understanding from today's deposition that if
15 you spoke to Mr. Reuter over the water cooler
16 about the OHSL litigation, that that would be a
17 privileged communication? Is that your
18 understanding of the position your counsel is
19 asserting?

20 MR. FISCHER: That's not the
21 position I'm asserting, so I object to the
22 question.

23 A. Can you repeat the question,
24 please?

25 Q. Certainly. If you spoke to Mr.

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1 there's one other qualification. If it was not
2 during the time of -- that they were working on
3 the transaction itself.

4 Q. Okay. Since --

5 MR. FISCHER: Do you understand
6 what I'm saying?

7 Q. Okay. Since December 3rd, 1999,
8 have you ever had any conversations with Mr.
9 Reuter about the fact of the merger or about
10 the fact of litigation arising from the merger?

11 MR. FISCHER: As long as it was
12 not for the rendition of legal services for
13 Provident, you can answer that question. If it
14 was for the rendition of legal services to
15 Provident, don't answer that question.

16 A. The way I understand your
17 question, sir, it seems there are two separate
18 questions there. Are you asking if I had
19 conversations regarding the merger transaction
20 with Mr. Reuter?

21 Q. I'm asking --

22 A. Or are you asking specifically
23 regarding the litigation?

24 Q. I'm asking about both, but I'm
25 phrasing it since December 3rd, 1999, have you

11 (Pages 38 to 41)

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1 ever had any conversations with Mr. Reuter
2 about the litigation or about the merger?

3 MR. FISCHER: Outside the presence
4 of counsel.

5 Q. Well, that's fine. I'll adopt
6 your edition of my question.

7 A. I have no recollection in the
8 December of '99 time frame regarding
9 conversations I may or may not have had with
10 Mr. Reuter regarding the transaction itself.

11 Q. Okay. I said since December 1999,
12 bring us all the way up through today.

13 MR. FISCHER: Let me instruct you
14 this way. If you had a conversation with Mr.
15 Reuter that was not for the rendition of legal
16 services to Provident, and was not with me
17 present in connection with -- or with any
18 lawyer at KMK dealing with the litigation -- in
19 other words, Mr. Brautigam, I believe, is
20 talking about social or water cooler
21 conversations about -- I guess about this
22 litigation, you can answer the question.

23 But if it was in the context of
24 the rendition of legal services to Provident or
25 defending Provident in this litigation, or in

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1 present. Is that correct?

2 A. No. Again, I -- my understanding
3 is you're asking about two separate areas.
4 There may be conversations regarding the merger
5 transaction itself while the transaction was
6 still being completed. And then there's a
7 separate set of discussions regarding
8 litigation.

9 Q. Okay. Well, I thought I had
10 clarified that by saying after December 3rd of
11 1999. The merger was completed on December
12 3rd, 1999, correct?

13 A. I don't recall what date the
14 merger was completed.

15 Q. Does that sound right, December of
16 1999?

17 A. I would be guessing, but my
18 recollection is that is a correct time frame.

19 Q. Okay. Well, thank you for
20 clarifying. I think I can focus in on this
21 now. Since the merger took place, I believe it
22 was December 3rd of 1999, but whenever it took
23 place, have you had any conversations, other
24 than the one you mentioned about the fact and
25 date of the deposition, with Mark Reuter about

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1 preparation for your deposition with me
2 present, you cannot answer the question.

3 A. The answer to your question
4 whether I had any conversations with Mr. Reuter
5 since December of '99 regarding in the broadest
6 terms this litigation, is yes.

7 Q. Okay. What did you say and what
8 did he say?

9 MR. FISCHER: Again, only
10 discussions that were not for the rendition of
11 legal services to Provident and were not for
12 the defense of Provident and were not in regard
13 to this deposition.

14 A. I have a recollection of a
15 conversation earlier this week where Mr. Reuter
16 asked what date I would be giving my
17 deposition. My recollection is that I replied
18 Tuesday and that Mr. Reuter replied that he
19 would be giving a deposition either Wednesday
20 or Thursday of this week.

21 Q. And in the last three and a half
22 years since this has -- since the merger, this
23 is the only conversation that you had with Mr.
24 Reuter about the merger or about the
25 litigation, other than with Patrick Fischer

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1 either of two topics, either the merger or the
2 litigation?

3 MR. FISCHER: Again, I instruct
4 you if it was for the rendition of legal
5 services to Provident -- as you know, merger
6 activities also occur after the merger date --
7 or in regard to this deposition and litigation,
8 don't answer it.

9 To the extent it's water cooler
10 talk, not for the rendition of legal services,
11 not in defense of Provident, not with me about
12 your deposition, go ahead and answer the
13 question.

14 A. I don't recall any conversations
15 with Mr. Reuter in a casual context regarding
16 this litigation.

17 Q. Okay. How about in a noncasual
18 context without Mr. Fischer present?

19 MR. FISCHER: Same instruction.

20 A. I don't recall any conversations
21 regarding this litigation in a noncasual
22 context that were not in the presence of Mr.
23 Fisher.

24 Q. Okay. Are you assisting in the
25 defense of Provident in this litigation, or the

12 (Pages 42 to 45)

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1 Meier litigation?

2 MR. FISCHER: Objection.

3 A. No.

4 Q. Are you -- since December 3rd of
5 1999, have you provided additional legal
6 services to Provident?

7 A. Yes.

8 Q. Other than services that may have
9 taken place after December 3rd of 1999 related
10 to the merger, what additional services have
11 you provided to Provident generally?

12 MR. FISCHER: Objection. Don't
13 discuss any communications with Provident.
14 Don't discuss any research you've done for
15 Provident. Don't discuss any documentation
16 you've done for Provident.

17 MS. ROWE: I'd like to make that
18 objection to relevance.

19 MR. FISCHER: And certainly do not
20 disclose anything about legal services that you
21 provided to Provident, except in the most
22 generic sense.

23 A. Since December of 1999, I have
24 worked on numerous transactions where the
25 client was the Provident Bank.

1 A. No.

2 Q. Okay. Since December 3rd, 1999,
3 have you had any conversations with Timothy
4 Matthews outside the presence of Pat Fischer
5 with respect to either the OHSL-Provident
6 merger or any pending litigation arising from
7 that merger?

8 MR. FISCHER: Same instruction.
9 If it involves the rendition of legal services
10 to Provident, work product for Provident or
11 with regard to conversations about your
12 deposition here, don't answer. Otherwise, you
13 can answer.

14 A. I don't recall any conversations
15 with Mr. Matthews other than to make Mr.
16 Matthews aware that I would not be present in
17 the office today.

18 Q. So you don't recall any
19 conversations with Mr. Matthews at or about the
20 time of the filing of the lawsuit in September
21 of 2000?

22 MR. FISCHER: Any conversations
23 with Mr. Matthews at all?

24 Q. Yes, about the time of the filing
25 of the lawsuit on September 20th of 2000.

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1 Q. Were any of these related to
2 mergers and acquisitions?

3 A. Yes.

4 Q. Did you provide similar services
5 to the services you provided with respect to
6 the OHSL-Provident merger?

7 MR. FISCHER: Objection,
8 relevance. And it's not -- it's not clear what
9 he provided, but go ahead if you can answer it.
10 He's asking you did you provide the exact same
11 work for both.

12 A. I'm not sure of the undefined term
13 similar services. I have provided
14 transactional attorney services to Provident
15 Bank in numerous transactions since 1999.

16 Q. Do you consider Provident and PFGI
17 to be the premier client of KMK?

18 MR. FISCHER: Objection.

19 MS. ROWE: Objection.

20 MR. FISCHER: Relevance, waste of
21 time.

22 A. I'm not sure I understand your
23 definition of premier.

24 Q. Do you have an understanding of
25 what a premier client means?

1 A. I don't recall any specific
2 conversations with Mr. Matthews in that time
3 frame in the year 2000.

4 Q. Okay. Do you recall any general
5 conversations with Mr. Matthews at about that
6 time?

7 A. No.

8 MR. FISCHER: Same objection.

9 Q. Okay. Did you ever speak to J.
10 David Rosenberg since December 3rd, 1999 about
11 either the fact of litigation or the
12 OHSL-Provident merger?

13 MR. FISCHER: Same instructions as
14 before.

15 A. I don't recall any conversations
16 with J. David Rosenberg.

17 Q. Okay. Did you ever have any
18 conversations with Gary Kreider about the fact
19 of the litigation or about the OHSL merger
20 since December 3rd, 1999?

21 MR. FISCHER: Same instructions.

22 A. I don't recall any conversations
23 with Mr. Kreider.

24 Q. Okay. Did you ever have any
25 conversations with Mark Weiss since December

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1 3rd, 1999, about the fact of the litigation or
2 merger related?

3 MR. FISCHER: Same instructions.

4 A. Yes.

5 Q. Okay. When did these
6 conversations take place?

7 A. In a meeting with my counsel, Mr.
8 Fischer present.

9 MR. FISCHER: Don't discuss what
10 was discussed then.

11 Q. Okay. How long did this meeting
12 last?

13 A. I don't recall.

14 Q. Can you give me an order of
15 magnitude, one hour or ten hours?

16 MR. FISCHER: Objection. His
17 answer was he didn't recall.

18 A. Less than five.

19 Q. Hours?

20 A. Yes.

21 Q. Okay. And you were not billing
22 for your time, correct?

23 A. That is correct.

24 Q. And you were not giving or seeking
25 legal advice, correct?

1 A. From whom I was seeking to obtain
2 legal advice? Again, for purposes --

3 MR. FISCHER: Same instruction.

4 A. For purposes of this series of
5 questions, all I can say is Mr. Fischer is my
6 counsel, representing me regarding my testimony
7 here today.

8 Q. Okay. Let's mark this as the next
9 exhibit, please.

10 (Plaintiff's Exhibit Number 41
11 was marked for identification.)

12 Q. Mr. Winstead, I'm handing you what
13 has been marked as Plaintiff's Deposition
14 Exhibit 41 and I ask you to take a look at it.
15 Have you seen it before?

16 A. It appears to be a paper printout
17 of the KMK web site profile of one John
18 Winstead. Yes, I have seen it on the web site.
19 I have not seen it in paper form.

20 Q. Okay. Are you familiar with it?

21 A. Yes.

22 Q. Do you recognize it?

23 A. Yes.

24 Q. And this is the printout from the
25 web site that lists your professional

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1 MR. FISCHER: Objection. That's
2 not accurate. If you can answer without
3 revealing communications, because I was there
4 and it was the rendition of legal services to
5 you.

6 A. My counsel was present, so I would
7 assume I was seeking legal advice.

8 Q. But you're not sure?

9 A. At the presence of counsel, I was
10 relying upon his advice.

11 Q. In addition to the presence of
12 counsel, you were in the presence of others who
13 were not your counsel, correct?

14 A. My understanding was Mr. Fischer
15 was my counsel.

16 Q. I think you made that clear, but
17 that has nothing to do with my question. Can
18 you answer my question, please?

19 MR. FISCHER: Objection. What's
20 your question?

21 A. I understand your question was Mr.
22 Fischer was present at the meeting, were there
23 others at the meeting seeking to give me legal
24 advice?

25 Q. Yes.

1 accomplishments, correct?

2 MR. FISCHER: Objection.

3 A. It appears to be a printout of the
4 web site profile.

5 Q. And it mentions that you're an
6 associate in commercial finance; is that
7 correct?

8 A. Yes.

9 Q. And Mr. Matthews is the chairman
10 of that department, correct?

11 A. Mr. Matthews is the head of that
12 practice group, correct.

13 Q. Okay. And please describe the
14 role of the commerce finance arm of KMK.

15 MR. FISCHER: Objection to the
16 term arm.

17 Q. Practice group.

18 A. The practice group concentrates in
19 providing services related to lending, mergers
20 and acquisitions, financial workout
21 arrangements, and other general corporate
22 matters.

23 Q. And how long have you been in that
24 practice group?

25 A. The practice group was

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1 and there's another KMK attorney representing
2 various defendants?

3 MR. FISCHER: Same objection. If
4 you can answer.

5 MS. ROWE: Objection to form.

6 A. No. I don't have any basis to
7 believe that would be a conflict of interest.

8 Q. Have you thought about it?

9 A. No.

10 Q. Do you have any basis to believe
11 it would not be a conflict of interest?

12 MR. FISCHER: Objection.

13 MS. ROWE: Objection. And to the
14 extent that it --

15 MR. FISCHER: Form.

16 MS. ROWE: -- calls for
17 attorney-client privilege about Provident,
18 Provident Financial asserts the privilege.

19 MR. FISCHER: Right.

20 A. Could you repeat your question?

21 (Record read by Reporter.)

22 MR. FISCHER: Other -- you can
23 answer that if you can answer it without
24 revealing communications with your counsel.

25 A. Again, I have not given thought or

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1 MR. FISCHER: Objection. He was
2 working -- he's already said he was working for
3 Keating, Muething & Klekamp.

4 A. At that time I don't recall the
5 specific people I was working with, but I
6 worked with a variety of the corporate partners
7 at Keating.

8 Q. Okay. What was your assignment
9 with respect to the OHSL-Provident merger?

10 MR. FISCHER: Objection. To the
11 extent it calls for communications for the
12 rendition of legal services, don't answer that
13 question. If you can answer it without
14 revealing those, go ahead.

15 A. My recollection of my assignment
16 with respect to this transaction was the
17 completion of the transaction to closing.

18 Q. What do you mean by that?

19 MR. FISCHER: Again, same
20 instruction. If you can answer it without
21 revealing attorney-client communications or the
22 rendition of legal services.

23 A. Again, in a general -- as a
24 general statement, my role was to perform those
25 tasks that were necessary to complete the

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1 conducted research regarding whether there is a
2 conflict of interest or not, so I don't have
3 any basis for or for not giving an answer to
4 that.

5 Q. Okay. We'll come back to that.
6 What was the purpose of the commercial finance
7 group with respect to the OHSL-Provident
8 merger?

9 MR. FISCHER: Objection.

10 MS. ROWE: Objection to form.

11 MR. FISCHER: Objection. Also
12 flies in the face of the entire testimony. The
13 commercial finance group didn't exist until the
14 fall of 2002.

15 Q. Actually that's a good point, let
16 me withdraw that question. What practice
17 group, if any, were you affiliated with in the
18 summer of 1999 when you were working on the
19 OHSL-Provident merger?

20 A. In 1999, I was assigned as a
21 corporate associate. At that time we did not
22 have formalized practice groups, as came into
23 existence in the fall of 2002.

24 Q. Okay. And who were you working
25 for at that time?

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1 merger transaction.

2 Q. What tasks did you perform?

3 A. I don't recall the specific tasks.

4 Q. What tasks did you perform
5 generally?

6 MR. FISCHER: Objection, form.
7 Again, do not reveal communications for the
8 rendition of legal services.

9 A. Again, I don't have a recollection
10 of specific tasking with respect to this
11 transaction. As a general statement, my role
12 as an associate is to complete such matters and
13 such documents as are necessary to accomplish
14 the terms in, for instance, a merger agreement.

15 Q. Okay. And what matters and what
16 documents were you asked to complete or have
17 input into?

18 MR. FISCHER: Same instruction.
19 Do not reveal communications from clients or
20 from other attorneys at Keating, Muething &
21 Klekamp involved in the rendition of legal
22 services for Provident in this matter.

23 A. Would you repeat the question?

24 (Record read by Reporter.)

25 MR. FISCHER: Same instruction.

16 (Pages 58 to 61)

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1 A. I don't recall the specific
2 documents I was tasked with working on in this
3 transaction.

4 Q. Okay. Tell me generally what you
5 did in this transaction.

6 MR. FISCHER: To the extent you
7 can answer it without revealing communications
8 for rendition of legal services to Provident,
9 you can answer, but otherwise, if it's
10 communications for the rendition of legal
11 services, do not answer the question.

12 A. I would repeat the answer I gave
13 you to your previous questions. Generally it
14 was my tasking to attend to such matters and to
15 complete such documents that were generally
16 required -- in the several steps required to
17 complete a transaction of this nature.

18 Q. Okay. Proxy materials and
19 registration statements had to be created to
20 complete the transaction, correct?

21 A. That is my understanding, yes.

22 Q. And did you work on these proxy
23 materials and registration statements?

24 MR. FISCHER: If --

25 A. We're getting into areas where --

1 correct?

2 MR. FISCHER: Objection. Do you
3 know?

4 A. I don't know.

5 Q. Okay. What happens when you
6 submit billing records?

7 A. I don't know how long those
8 records are retained and in what form or
9 format.

10 Q. Okay. But you did submit these
11 billing records to KMK, correct?

12 A. I don't have any specific
13 recollection of the bills I submitted for this
14 transaction, but as a general statement, I
15 would submit time for matters I worked on.

16 Q. And would these time records have
17 a more detailed breakdown of what you did and
18 when you did it?

19 A. As a general statement, my billing
20 records would reflect the specific matters and
21 the specific amount of time spent.

22 Q. And do you think that these
23 billing records would assist your recollection
24 in testifying today?

25 A. With respect to specific matters

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1 MR. FISCHER: Okay. If you can
2 tell him without revealing communications about
3 the rendition of legal services, you can
4 answer. If you can't, then don't answer the
5 question.

6 A. And your question was whether I
7 worked on registration and proxy materials?

8 Q. Yes.

9 A. Indirectly, yes.

10 Q. Okay. What did you do?

11 MR. FISCHER: Same instruction.

12 A. I recall preparing a summary of
13 the merger transaction for including in certain
14 of the SEC materials.

15 Q. Okay. What else did you do?

16 MR. FISCHER: Same instruction.

17 A. I don't recall any other specific
18 activity with respect to the registration
19 materials.

20 Q. Okay. You were billing for your
21 time at this point, correct?

22 A. To my recollection, I would have
23 been billing.

24 Q. And your billing records would be
25 reflected in the books and records of KMK,

1 worked on on specific dates, I don't know what
2 those billing records contain, but as a general
3 statement, billing records are going to have
4 more specific information regarding what I
5 accomplished on any particular day.

6 Q. And this specific recollection
7 would assist you as you sit here today and give
8 testimony under oath, correct?

9 MS. ROWE: Objection to form.

10 MR. FISCHER: Objection.

11 A. I can't say whether any particular
12 billing record would or would not refresh my
13 memory.

14 Q. Okay. Would you --

15 A. It would depend on what the
16 billing record said.

17 Q. Okay. And you wouldn't be able to
18 make a definitive conclusion unless and until
19 you had those billing records in front of you,
20 correct?

21 MS. ROWE: Objection.

22 MR. FISCHER: Objection.

23 A. Again, a definitive -- a billing
24 record could or could not recollect a memory of
25 a particular transaction or a particular matter

17 (Pages 62 to 65)

Page 66

1 I worked on. It would depend on what the
2 billing records said or didn't say.

3 Q. Okay. For the purposes of this
4 deposition, would it be of assistance to you to
5 have those billing records in front of you so
6 you could refer to them if needed?

7 MR. FISCHER: Objection.

8 A. Assistance in what matter?

9 MR. FISCHER: Exactly.

10 Q. Would it be of assistance in
11 helping you recall specifically what you did on
12 a specific day?

13 MR. FISCHER: Objection. He's
14 already answered that question.

15 A. A billing record put in front of
16 me would merely be a billing record that I
17 would read at this table. I don't recall any
18 particular item that I would have recorded for
19 my billing purposes that would -- would elicit
20 any specific response to anything in particular
21 I worked on this in this transaction or any
22 particular circumstance. Another way of saying
23 that, a billing record would be a billing
24 record. I would -- you would put it in front
25 of me and I would read.

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1 Q. In preparation for this
2 deposition, did you look at documents?

3 A. Yes.

4 Q. What documents did you look at?

5 A. I don't recall the specific
6 documents.

7 Q. Do you recall generally what
8 documents you looked at?

9 A. I recall reviewing a time line of
10 the merger transaction. I recall that document
11 had a cover letter from me to various parties.

12 Q. And which parties did you send
13 them out to?

14 A. My recollection is that one of the
15 parties was Cliff Roe at Dinsmore & Shohl.

16 Q. Okay. Any other parties that you
17 recall?

18 A. I don't recall any other parties.

19 Q. Okay. Please take a look at what
20 has been previously marked as Defendant's
21 Exhibit 1. I have some extra copies for you
22 guys. Have you seen that document before?

23 MR. FISCHER: It's a long
24 document. Feel free to look through it to the
25 extent you need.

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1 Q. Okay.

2 MS. ROWE: Mike, can we take a
3 brief break? We've been going for about an
4 hour.

5 MR. BRAUTIGAM: Sure, that's fine.

6 (Brief recess.)

7 BY MR. BRAUTIGAM:

8 Q. Good afternoon, Mr. Winstead. Mr.
9 Winstead, do you consider yourself to be an
10 expert in mergers and acquisitions?

11 A. I'm not sure what your definition
12 of expert would be, but in my definition, no.

13 Q. Okay. Do you consider yourself to
14 be an expert in complex financial transactions?

15 A. Again, I'm not sure what
16 definition of expert you would use, but the
17 definition I would use, my answer would be no.

18 Q. Okay. What is your definition of
19 an expert?

20 A. In the context of professional
21 skill and experience, I would -- my
22 understanding of expert would be someone with
23 more -- with many, many years of experience.
24 I've been practicing law in this area for five
25 years.

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1 Q. Right, right, consistent with my
2 previous instruction.

3 A. Would you repeat your question,
4 please?

5 Q. Have you seen this document
6 before?

7 A. It's my recollection I have not
8 seen this document before.

9 Q. You're not familiar with that
10 document?

11 A. This is -- appears to be an
12 executed copy of a notice of shareholders
13 meeting and accompanying cover letter, and the
14 final form of a proxy statement regarding the
15 OHSL matter. To my recollection, I have not
16 reviewed any of these documents in this form or
17 previously seen these documents in this form.

18 Q. And what form are you talking
19 about?

20 A. In the form presented here before
21 me as Defendant's Exhibit Number 1.

22 Q. Okay. Are you saying that you
23 never saw it on paper? Did you perhaps see it
24 in electronic form or something else?

25 MR. FISCHER: Objection to the

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1 form of the question.

2 A. The document presented as
3 Defendant's Exhibit Number 1 appears to be the
4 proxy statement in its final form with
5 attachments. Again, I have not seen the
6 document in this form with these documents as
7 attachments.

8 Q. Okay. Did you see some or all of
9 this document in some form?

10 A. Yes.

11 Q. Okay. What did you see?

12 A. It appears that an executed copy
13 of an Agreement and Plan of Merger is attached.
14 I recall in a general sense having seen this
15 document before.

16 MR. FISCHER: When you say this
17 document --

18 A. The Agreement and Plan of Merger.

19 Q. Okay. Where did the executed
20 Agreement and Plan of Merger come from? In
21 other words, what computer system did it come
22 off?

23 MR. FISCHER: Objection. Two
24 questions.

25 A. Your question is, where the

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1 by understanding how the transaction worked.

2 Q. Okay. What was your hourly rate
3 when you were working on this merger?

4 A. I don't recall.

5 Q. Was it in the nature of \$200 an
6 hour?

7 A. I don't recall, but that sounds
8 very high.

9 Q. What's your hourly rate now?

10 A. I believe my current hourly rate
11 is \$160 an hour.

12 Q. Now, Mr. Winstead, how did the
13 transaction work?

14 MR. FISCHER: Objection. Unclear,
15 bad form. If you understand the question,
16 answer it. If you don't, ask him to rephrase
17 it.

18 A. Again, I'm not trying to be
19 obtuse, but I'm not sure what you mean by how
20 the transaction worked. I don't have any
21 specific recollection of the details of this
22 merger and acquisition.

23 There -- there is no general
24 mechanism -- series of mechanisms beyond some
25 very general outlines of a merger or along

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1 Agreement and Plan of Merger came from?

2 Q. Yes.

3 A. I don't know.

4 Q. Okay. Do you believe that it came
5 from computers at KMK?

6 A. I believe a form of the document
7 was on computers at KMK, although I don't have
8 any specific recollection of the document on
9 computers at KMK.

10 Q. Okay. You're familiar with the
11 OHSL-Provident merger, correct?

12 A. I worked on the transaction. I
13 don't have any specific knowledge of any
14 specific matters regarding the merger.

15 Q. Okay. Did you understand the
16 transaction when you worked on it?

17 A. I'm not sure I understand your
18 question.

19 Q. Okay.

20 A. What do you mean by understand the
21 transaction?

22 Q. Did you understand how the
23 transaction worked?

24 MR. FISCHER: Objection.

25 A. Again, I'm not sure what you mean

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1 those lines that I could give you.

2 Q. Okay. You're familiar with the
3 phrase mergers and acquisitions, correct?

4 A. Yes.

5 Q. What does that phrase mean?

6 A. It means --

7 MR. FISCHER: Objection. Broad.

8 A. It means where one or more
9 companies combine their operations of their
10 businesses.

11 Q. Is that what happened here?

12 A. In a general sense, yes.

13 Q. What were the terms of the
14 combination?

15 MR. FISCHER: Objection. The
16 document says what the terms were. You're
17 asking him to repeat a document that's 50 pages
18 long? Is that what you want?

19 MS. ROWE: I'll object to form.

20 A. Would you repeat the question?

21 Q. What were the terms of the merger?

22 MR. FISCHER: Same objection.

23 Q. Generally speaking.

24 MR. FISCHER: Objection to form.

25 A. Again, as a general statement,

19 (Pages 70 to 73)

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1 this was a merger and acquisition involving the
 2 Provident Bank and Oak Hills. The definitive
 3 terms of the transaction are in the document --
 4 the merger agreement itself. As to the
 5 specific terms, I would have to refer to the
 6 merger agreement. I don't have any independent
 7 knowledge what's beyond the merger agreement.
 8 I don't have any independent recollection of
 9 the facts and figures of this specific merger.

10 Q. With respect to the merger, OHSL
 11 shareholders were to surrender their stock,
 12 correct?

13 MR. FISCHER: Objection.

14 A. Based on my recollection of the
 15 transaction, that is correct.

16 Q. And what were they to receive in
 17 exchange for their stock?

18 A. I don't recall.

19 Q. Does Provident stock ring a bell?

20 MR. FISCHER: Objection to "ring a
 21 bell."

22 A. My understanding was this was a
 23 stock transaction. My recollection, I should
 24 say, was that this was a stock transaction.

25 Q. And what does that mean?

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1 the line of conjecturing. But in general
 2 terms, proxy statements, my understanding,
 3 solicits the votes of shareholders, although I
 4 don't know that to be always true with every
 5 proxy statement produced.

6 Q. In a general sense, did you
 7 understand the OHSL-Provident merger that you
 8 were working on?

9 MR. FISCHER: Objection. When?
 10 Form of the question, too broad.

11 A. At the time I was working on the
 12 transaction, I don't have any recollection of
 13 either understanding or not understanding any
 14 particular point in the -- in the merger
 15 agreement or with respect to the transaction.
 16 Any specific questions I would have had, I
 17 would have asked other people involved in the
 18 transaction.

19 Q. Okay. My question is a little
 20 different. During the time you were working on
 21 the OHSL-Provident merger, did you generally
 22 understand the merger and its terms?

23 MR. FISCHER: Same objection. I
 24 believe he's already answered. Go ahead.

25 A. Again, as a general statement, I

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1 A. The shareholders of one company
 2 exchanged their shares in the company for the
 3 shares of another company.

4 Q. And in this case, upon certain
 5 conditions precedent being met, shareholders of
 6 OHSL would receive Provident stock, correct?

7 MS. ROWE: Object to form.

8 MR. FISCHER: Objection.

9 A. Again, as a very general
 10 statement, that's my recollection of this
 11 transaction, but any specific terms would be in
 12 the merger agreement.

13 Q. Okay. We're not there yet, we're
 14 just on the general stuff, okay? What's on the
 15 proxy material?

16 A. As a very general statement, a
 17 proxy is a technical document that asks
 18 shareholders of a company to be aware of,
 19 understand and consent to company matters.

20 Q. When you say consent, you actually
 21 mean to vote on company matters, correct?

22 A. My area of practice is not
 23 securities law. I'm giving you very close to
 24 layman term understanding of what proxy
 25 statement is and is not. In fact, I'm pushing

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1 was aware that there was a merger transaction
 2 going on. I don't recall the specific extent
 3 of the detailed knowledge with respect to the
 4 transaction at that time.

5 Q. Mr. Winstead, once again my
 6 question is a little different. During the
 7 time you were working on the transaction in the
 8 summer of 1999, did you understand it? I'm not
 9 asking about detailed knowledge. I'm not
 10 asking for complex ratios. I'm asking
 11 generally speaking if you understand the
 12 transaction.

13 MR. FISCHER: Same objection,
 14 harassing now.

15 MS. ROWE: Objection.

16 A. Again, my question is, what do you
 17 mean by understand the transaction? Was I
 18 aware a transaction was going on? Yes.

19 Q. Well, Mr. Winstead, the way it
 20 works in this procedure is I get to ask the
 21 questions. If you can answer the question, you
 22 should. If you can't, tell me and I'll move on
 23 to a different area.

24 MR. FISCHER: Objection. Don't
 25 lecture the witness, ask a question.

20 (Pages 74 to 77)

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1 A. Again, beyond I don't understand
2 the "understand," I was aware the transaction
3 was going on in the summer of 1999.

4 Q. Okay. So it's your understanding
5 that you do not understand the word, quote,
6 understand, unquote, correct?

7 MR. FISCHER: Objection.

8 MS. ROWE: Objection.

9 MR. FISCHER: That's not what he
10 said.

11 A. Again, I don't understand when you
12 ask me did I understand the transaction in the
13 summer of 1999, what that means.

14 Q. You can explain to me in general
15 the terms of the merger?

16 MR. FISCHER: Same objection.

17 A. No. I don't have a recollection
18 of -- of the terms of this transaction.

19 Q. Okay. Even in general terms?

20 A. In the general terms.

21 MR. FISCHER: Same objection.

22 A. In general terms it was a merger
23 of the two entities, Provident Bank and OHSL.

24 Q. And it was a stock for stock
25 transaction, correct?

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1 accounting firms, other parties that are put
2 before the shareholders for their consent.

3 Q. So they're being asked to vote
4 when they receive proxy materials in most
5 cases, correct?

6 MR. FISCHER: Objection.

7 A. Again, as a general statement and
8 not as particularly knowledgeable about when --
9 where proxy statements can be used, proxy
10 statements are used to solicit the votes of
11 shareholders.

12 Q. What was the purpose of this proxy
13 material?

14 MR. FISCHER: Same objection.

15 A. I don't have a detailed knowledge
16 of the specific purposes and the specific
17 consents that this proxy statement was used
18 for. My general recollection is this proxy
19 statement would have been and was used to
20 gather the consent of the shareholders to
21 approve the merger transaction with the
22 Provident Bank.

23 Q. Okay. Is it important that the
24 proxy materials be accurate?

25 MR. FISCHER: Objection.

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1 A. My recollection, it was a stock
2 transaction, yes.

3 Q. And it was based on a certain
4 formula based on a certain ten-day, two-day
5 average, correct?

6 MS. ROWE: Object to form.

7 MR. FISCHER: Objection.

8 A. I don't recall that level detail.

9 Q. Well, you do understand that OHSL
10 shareholders, if the merger was approved, would
11 receive Provident stock, correct?

12 A. That is my recollection.

13 Q. Okay. You gave a working
14 deposition -- definition of proxy materials
15 before. Do you remember that definition?

16 MR. FISCHER: Objection.

17 A. In a general sense, yes.

18 Q. Okay. What is the purpose of
19 proxy materials?

20 A. My understanding in a general
21 sense, a proxy statement is provided to the
22 shareholders to solicit their knowledge
23 regarding any number of purposes, including
24 transactions, approval of transactions,
25 election of board of directors, approval of

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1 A. Again, I think that's a question
2 that in the context of preparation of proxy
3 materials, accurate may have a specific legal
4 definition that I'm not knowledgeable enough to
5 provide.

6 Q. So it's your testimony as you sit
7 here under oath that you're not aware one way
8 or another whether it's important for the proxy
9 materials to be accurate. Is that your
10 testimony?

11 MR. FISCHER: Objection. That's
12 not what he said. Form.

13 A. Again, in the context of a proxy
14 statement, accurate may have a specific legal
15 definition that I'm not in a position to give a
16 specific legal definition to.

17 Q. Okay. Well, Mr. Winstead, you've
18 worked on a number of mergers and acquisitions.
19 You've worked on a number of complex financial
20 situations -- transactions. Are you aware of
21 any legal, term of art definition of accurate?

22 A. Well, to answer your question,
23 I've never seen a defined term in any document
24 for accurate. There is certainly conceptual
25 provisions regarding materiality, which is in

21 (Pages 78 to 81)

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1 some ways related to accurate.

2 Accurate and precise are not the
3 same word. There can be some questions as to
4 precision, but as a legal concept, I don't
5 recall ever dealing with accurate or
6 inaccurate.

7 Q. Okay. As a general concept, not a
8 legal concept, do you believe that it's
9 important for the proxy materials to be
10 accurate?

11 A. As a general statement, factual
12 information presented as factual information,
13 there wouldn't seem to be many contexts where
14 it would be required to be inaccurate.

15 Q. Let me try that a different way.
16 Do you think you can answer this question yes
17 or no? Is it important that proxy materials be
18 accurate?

19 MR. FISCHER: Objection.

20 MR. BUCKLEY: Objection.

21 MR. FISCHER: You can answer it
22 yes or no, but you're not limited to that. You
23 can always give an explanation.

24 A. As a general statement, you know,
25 all documentation that any -- especially any

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1 consider it material, some parties immaterial.

2 Q. Are you done?

3 A. Yes, sir.

4 Q. You don't have any problem in
5 understanding truthful, correct?

6 A. In a general definition of the
7 word, I don't believe so, no.

8 Q. And, in fact, you swore to tell
9 the truth when you were administered the oath
10 earlier today, correct?

11 A. Yes.

12 Q. So you've never seen a legal
13 definition of truthful that's other than the
14 commonly accepted definition, correct?

15 A. That's correct. To the extent
16 though that concepts of materiality play into
17 many legal documents, many matters subject to
18 litigation come down to both sides believing
19 their, their position is true and accurate.

20 Again, I'm not trying to dispute
21 the concepts in general layman's terms
22 understanding of accurate and truthful. My
23 only point is in certain legal contexts, those
24 terms may have a different meaning.

25 Q. Okay. Do you believe it's

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1 public company produces, you know, there are
2 various standards as to what is required to be
3 disclosed, the level of disclosure. But of
4 course as a general statement, information
5 provided should be accurate.

6 Q. Thank you. Is it important that
7 the information provided in the proxy materials
8 be truthful?

9 MR. FISCHER: Same objection.

10 A. Again, in the context of specific
11 SEC filings, the concept of truthful, accurate,
12 material may have specific legal definitions
13 that I'm not in a position, don't have the
14 background to give you a specific answer to.
15 Obviously there are very few occasions, if any,
16 where any legal documents should be untruthful.

17 Q. Okay. Can you think of such an
18 occasion where legal documents should be
19 untruthful?

20 A. Again, I think we are
21 discussing --

22 MR. FISCHER: Objection.

23 A. -- what some parties might
24 consider to be truthful, some parties might
25 consider untruthful. Some parties might

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1 important that the proxy materials be complete?

2 MR. BUCKLEY: Objection.

3 MR. FISCHER: Objection.

4 MS. ROWE: Objection.

5 A. My answer is -- parallels my
6 answer before in the context of the proxy or
7 other type materials, complete can have a
8 different definition than what a general
9 layman's term would mean.

10 Q. Okay. With respect to these proxy
11 materials and your definition of what complete
12 means, do you believe that these proxy
13 materials were complete?

14 MR. FISCHER: Objection.

15 MR. BUCKLEY: Objection.

16 MS. ROWE: Objection.

17 MR. FISCHER: He's never read
18 them, he just said that. How can he answer
19 that question?

20 A. I don't have any knowledge of
21 these specific proxy materials that would allow
22 me to give an answer to that, whether they
23 were -- I believe your question was, complete
24 and truthful.

25 Q. All right. You referred to the

Page 86

1 word materiality previously. Do you have a
 2 working definition of that word?
 3 A. I do not have a working definition
 4 of materiality.
 5 Q. Isn't it necessary for your job to
 6 have a working definition of materiality?
 7 MR. FISCHER: Objection.
 8 A. No.
 9 Q. Was the word materiality ever used
 10 by anyone during the summer of 1999 when you
 11 were working on the OHSL-Provident merger?
 12 MR. FISCHER: Objection.
 13 MS. ROWE: Objection to form.
 14 MR. FISCHER: To the extent it
 15 calls for rendition -- or telling of
 16 communications between lawyers rendering legal
 17 services to Fifth Third, don't answer that
 18 question.
 19 MS. ROWE: Provident?
 20 MR. BRAUTIGAM: Fifth Third?
 21 MR. FISCHER: I'm sorry,
 22 Provident.
 23 A. I don't have any recollection of
 24 discussions of materiality in the summer of
 25 1999.

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1 of what would be material or not material to
 2 this transaction.
 3 Q. Okay. How about if a director
 4 resigned in part in protest of the transaction,
 5 would you think that that's material?
 6 MR. BUCKLEY: Objection.
 7 MS. ROWE: Objection.
 8 MR. FISCHER: The same objection.
 9 A. Again, these are concepts and
 10 questions that have very highly technical and
 11 highly litigated definitions over lots of case
 12 law in many years, so I have absolutely no
 13 basis to give you an answer as to whether that
 14 would be material or immaterial in any
 15 circumstances.
 16 Q. Okay. What's so highly technical
 17 about a director resigning in part in protest
 18 because he disagrees with the OHSL-Provident
 19 merger?
 20 MR. FISCHER: Objection.
 21 MS. ROWE: Objection.
 22 A. And you -- could you repeat the
 23 question?
 24 Q. Sure. What's so highly technical
 25 about a director resigning in part in protest

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1 Q. Did you have an understanding of
 2 materiality in the summer of 1999?
 3 A. I don't recall what my conception
 4 of materiality was in the summer of 1999.
 5 Q. What's your conception of
 6 materiality now?
 7 A. Materiality can be in the context
 8 of transactional documents, a defined term,
 9 defined to specific transactions in --
 10 transactions in which I work, that definition
 11 of material can be specified as a more general
 12 legal concept.
 13 I don't have a specific working
 14 definition of what any particular Court has
 15 considered material or not material. I believe
 16 the definition of material can vary, depending
 17 on the circumstances of a particular litigation
 18 matter, the circumstances of a particular
 19 transaction.
 20 Q. And what would you consider
 21 material to this transaction?
 22 MR. FISCHER: Objection.
 23 MR. BUCKLEY: Objection.
 24 MS. ROWE: Objection.
 25 A. I don't have any conceptual idea

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1 shortly before the OHSL-Provident merger was
 2 finalized?
 3 MR. FISCHER: Same objection.
 4 MS. ROWE: Same objection.
 5 MR. BUCKLEY: Objection.
 6 A. Well, I believe the question is --
 7 it's not whether that is a technical matter,
 8 it's whether that is a material matter. Am I
 9 stating your question correctly?
 10 Q. No, you're not. Please answer my
 11 question.
 12 MR. FISCHER: Objection.
 13 MS. ROWE: Objection.
 14 A. Again, I don't see what --
 15 MR. FISCHER: Do you understand
 16 the question?
 17 A. I don't understand the question.
 18 Q. Okay. You testified that in some
 19 cases materiality could be a highly technical
 20 and highly litigated concept. Do you remember
 21 that testimony generally?
 22 MR. FISCHER: Objection.
 23 A. Yes.
 24 Q. Okay. Did you ever learn that one
 25 of the directors of Oak Hills resigned shortly

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1 before the OHSL directors gave the final vote
2 in favor of the merger because in part he
3 disagreed with the transaction?

4 MR. FISCHER: Don't -- I instruct
5 you not to answer that to the extent you've
6 learned that from counsel. If you can answer
7 the question, go ahead. If you can't, don't.

8 And if you learned it from other
9 lawyers with Keating, Muething & Klekamp during
10 the rendition of legal services to Provident,
11 don't answer it. If you learned it from third
12 parties or something, go ahead, assuming it's
13 true.

14 A. I have no third-party information
15 as to any resignations or the context in which
16 they occurred.

17 Q. What do you mean by third-party
18 resignations?

19 A. The only knowledge I would have --
20 MR. FISCHER: Again, don't discuss
21 communications with me.

22 A. -- would be conversations with Mr.
23 Fischer.

24 Q. Did anyone on the KMK team ever
25 learn that an OHSL director had resigned in

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1 interrupting me, sir.

2 MR. BRAUTIGAM: Well, finish.

3 MR. FISCHER: As privileged
4 communication for the rendition of legal
5 services, just like your discussions with Mr.
6 Mesh would be privileged, just like your
7 discussions with a paralegal would be
8 privileged. You're asking him for those. He's
9 not going to answer those questions.

10 MR. BRAUTIGAM: I disagree with
11 your instruction. I'll be showing him
12 documents later that that's a completely
13 improper instruction.

14 BY MR. BRAUTIGAM:

15 Q. Did you have discussions with Tim
16 Matthews about the resignation of an OHSL
17 director during the time you were working on
18 the merger?

19 MR. FISCHER: Instruct you not to
20 answer that question.

21 A. My counsel has instructed me not
22 to answer that question.

23 Q. Did this document come from the
24 computers at KMK?

25 MR. FISCHER: Which document?

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1 part in protest?

2 MR. FISCHER: Objection.

3 MS. ROWE: Objection to form.

4 MR. FISCHER: Again, don't
5 disclose communications with counsel.

6 MR. BRAUTIGAM: When you say
7 "communications with counsel," are you saying
8 that if he spoke to Mark Reuter or Tim Matthews
9 or somebody like that, that that's a privileged
10 communication?

11 MR. FISCHER: If it was for the
12 rendition of legal services to Provident in the
13 summer and fall of '99, yes.

14 MR. BRAUTIGAM: Well --

15 MR. FISCHER: Because lawyers
16 representing somebody have to communicate with
17 each other.

18 MR. BRAUTIGAM: That's an improper
19 instruction.

20 MR. FISCHER: No, it's not. It's
21 privileged.

22 MR. BRAUTIGAM: I believe that you
23 know -- can I finish, please? Please don't
24 interrupt me.

25 MR. FISCHER: You were

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1 Q. Defendant's Exhibit 1.

2 A. By Defendant's Exhibit 1, you mean
3 this entire document?

4 Q. Did any part of the document come
5 from the computers at KMK?

6 MR. FISCHER: That's a different
7 question.

8 A. I don't know what you mean by,
9 "come from the computers at KMK."

10 Q. Let me see if I can explain it to
11 you. The data, information or words are in the
12 computer, someone hits print and it comes out
13 in paper form. That's what I mean by from the
14 computers at KMK. Do you understand the
15 question?

16 A. As I believe I testified to
17 earlier, I recall that the Agreement and Plan
18 of Merger, which is one of the documents which
19 is part of Defendant's Exhibit Number 1, was at
20 some point on the computer system, the word
21 processing system at KMK. I don't have any
22 specific knowledge regarding any of the other
23 documents as to their status on the computers
24 of KMK.

25 Q. Okay. Let's look at the first

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1 page. Who wrote the first page of Defendant's
2 Exhibit 1?

3 MR. FISCHER: Objection.

4 A. I don't know.

5 Q. Okay. What computer system did it
6 come off?

7 A. I don't know.

8 Q. Okay. What are the choices? It
9 could have come off KMK's computer system,
10 correct?

11 A. I don't know that that's a choice.
12 I could -- conceivably it could have come off
13 any computer in the world.

14 Q. Okay. Do you think that this
15 document just fell from the sky somewhere?

16 MR. FISCHER: Objection.

17 MS. ROWE: Objection to form.

18 A. No.

19 MR. FISCHER: He said he didn't
20 know.

21 MS. ROWE: He said he didn't know
22 where it came from.

23 MR. FISCHER: Badgering the
24 witness.

25 Q. Do you believe that Defendant's

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1 Q. Okay. Based on your experience in
2 mergers and acquisitions and transactions of
3 this sort, do you believe that the chairman of
4 the Board typically writes the letter to the
5 shareholders?

6 MR. FISCHER: Objection.

7 A. I don't have experience in
8 drafting these type of letters. I don't know
9 what the standard procedure would be.

10 Q. Who was in charge of this
11 transaction from KMK's viewpoint?

12 MR. FISCHER: Objection to the
13 form of the question.

14 A. I don't know.

15 Q. Who was the lead lawyer working on
16 the transaction?

17 A. My recollection is there was no
18 particular lead lawyer -- quote, unquote, lead
19 lawyer. Different lawyers at KMK worked on
20 different aspects of the transaction, to my
21 knowledge.

22 Q. Okay. What did Gary Kreider work
23 on?

24 A. I don't know.

25 Q. What did J. David Rosenberg work

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1 Exhibit 1 -- at least the first page of
2 Defendant's Exhibit 1 could have been written
3 by someone at the Dinsmore law firm?

4 MR. FISCHER: Objection.

5 MR. BUCKLEY: Objection.

6 MR. FISCHER: "Could have been"
7 calls for speculation.

8 A. The document could have been
9 written by anyone.

10 Q. Who would know who wrote the first
11 page of this document?

12 A. The first page of the document is
13 signed by a Norbert Brinker. I would assume
14 Mr. Brinker would have specific knowledge as to
15 who prepared this document for his signature.

16 Q. Really? Why would you assume
17 that?

18 A. Because Mr. Brinker signed the
19 document, I would assume he would know who
20 handed him the document for signature.

21 Q. Okay. Do you know if Mr. Brinker
22 actually signed the document or if his
23 signature was somehow electronically affixed to
24 it?

25 A. I do not know that.

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1 on?

2 A. I don't know.

3 Q. What did Tim Matthews work on?

4 A. My understanding is that Tim
5 Matthews worked on the actual agreement --
6 merger agreement.

7 Q. Are you referring to Exhibit A of
8 the document?

9 A. I'm looking at Annex A, Agreement
10 and Plan of Merger.

11 Q. And Timothy Matthews worked on
12 that, correct?

13 A. That is my understanding, yes.

14 Q. And when you say "worked on that,"
15 what exactly does that mean? Did he write it?

16 A. I don't know what Mr. Matthews'
17 specific role was.

18 Q. Did you work on Annex A?

19 A. I don't recall working on Annex A.

20 Q. Okay. How did Annex A get
21 finalized?

22 A. I don't know.

23 Q. How did the entire document get
24 finalized?

25 MR. FISCHER: Are you saying all

25 (Pages 94 to 97)

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1 of Exhibit I or the annex?
 2 Q. All of Exhibit I.
 3 MR. FISCHER: Okay.
 4 A. I don't understand what you mean
 5 by finalized.
 6 Q. Well, I'm going to show you drafts
 7 later and drafts circulated between Dinsmore
 8 and KMK and other parties at Oak Hills and
 9 Provident. Is that correct?
 10 A. My recollection is that drafts of
 11 various documents were circulated among KMK and
 12 Dinsmore with respect to this transaction. I
 13 don't have any specific recollection of
 14 specific documents and specific back and forth
 15 between KMK or Dinsmore or anyone else.
 16 Q. Okay. Now, in addition to drafts
 17 circulating between KMK and Dinsmore, they went
 18 to other parties, such as people at Provident
 19 and people at Oak Hills, correct?
 20 A. I don't have any specific
 21 recollections of any other parties the
 22 documents went to.
 23 Q. What was the purpose of
 24 circulating drafts among and between counsel?
 25 A. As a general statement, the

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1 question, lawyers review the documents,
 2 finalize the documents. That's generally what
 3 would occur for any type of transaction,
 4 including mergers and acquisitions.
 5 Q. Okay. What lawyer at KMK was
 6 responsible for finalizing all or part of
 7 Defendant's Exhibit I?
 8 A. I don't know.
 9 Q. Who would know?
 10 A. I don't know.
 11 Q. Was there a lawyer who you felt
 12 was in charge of the overall transaction?
 13 MR. FISCHER: Objection. Asked
 14 and answered.
 15 A. Again, my understanding in this
 16 transaction is that various lawyers were
 17 working on various aspects of the transaction.
 18 I have no knowledge of one attorney who was the
 19 lead -- quote, unquote, lead for the
 20 transaction.
 21 Q. Aside from Tim Matthews, who did
 22 what at KMK?
 23 MR. FISCHER: Objection to the
 24 form.
 25 A. With respect to my knowledge and

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1 purpose of lawyers circulating transaction
 2 documents is to collect, incorporate and
 3 negotiate comments, revisions to those
 4 documents.
 5 Q. Have you ever read every word and
 6 looked at every number in Defendant's Exhibit
 7 I?
 8 A. No.
 9 Q. Have you ever read the first page
 10 of Defendant's Exhibit I?
 11 A. Word for word, no.
 12 Q. Has anyone at Keating been given
 13 the responsibility to look at every word and
 14 look at every number at some point during the
 15 merger transaction?
 16 MS. ROWE: Objection.
 17 A. I don't know.
 18 Q. Is that typical in the way these
 19 things work?
 20 MR. FISCHER: Objection.
 21 A. I don't know what you mean by
 22 "these things."
 23 Q. Mergers and acquisitions of
 24 financial institutions.
 25 A. As a general answer to your

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1 recollection of this transaction, Mr. Weiss and
 2 Mr. Reuter worked on the proxy statement and
 3 related materials.
 4 Q. This is a joint document, correct?
 5 A. I don't know what you mean by
 6 joint.
 7 Q. It's put out by both Provident and
 8 OHSL, correct?
 9 A. I don't know that.
 10 Q. Could you look at the third page
 11 of this document? Could you read these two
 12 headings to yourself, please?
 13 MR. FISCHER: Feel free to read
 14 whatever you need to read, John.
 15 A. Can you repeat your question,
 16 please?
 17 Q. My question is, was this a joint
 18 document put out jointly by both Provident and
 19 OHSL?
 20 A. I don't know.
 21 Q. And reading those headings does
 22 not refresh your recollection as to whether it
 23 was a joint document?
 24 A. I have read --
 25 MR. FISCHER: Objection. Go

26 (Pages 98 to 101)

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1 ahead.

2 A. -- the third page of Defendant's
3 Exhibit Number 1, and in that reading, I don't
4 see any indication that this is a quote,
5 unquote, joint document.

6 Q. Okay. On the top left, do you see
7 it says, Proxy Statement for the Special
8 Meeting of Stockholders of OHSL Financial
9 Corporation? Do you see that?

10 A. Yes.

11 Q. And we talked about what a proxy
12 statement is, correct?

13 A. Yes.

14 Q. And on the right it says,
15 Prospectus of Provident Financial Group, Inc.,
16 common stock. Do you see that?

17 A. Yes.

18 Q. What is a prospectus of Provident
19 Financial Group, Inc. for common stock?

20 MR. FISCHER: Objection.

21 MS. ROWE: Objection.

22 A. Again, as a general statement and
23 without having a detailed knowledge in this
24 area of the law or working in this area of the
25 law, a prospectus gives a potential purchaser

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1 And without waiving -- going to
2 waive privilege, I'm going to let you ask him
3 questions because I think -- I may be wrong --
4 from the record, unless we want to go back and
5 reread the whole thing, you asked him who was
6 representing him, and I think he correctly
7 answered that I was.

8 I don't think you ever asked who
9 was representing all of the other people in the
10 room. And to start off, so you can ask him
11 questions, this was at my insistence as counsel
12 to the firm, because somebody, I believe you,
13 Mr. Brautigam, had asked for the deposition of
14 witnesses that were lawyers in the law firm.

15 And this was to determine various
16 issues involving conflicts and disqualification
17 or not. And so I'll let you ask him about that
18 meeting because that is not Provident's
19 privilege, that would be KMK's privilege.

20 MR. BRAUTIGAM: Okay. Well, I'll
21 come back to that.

22 BY MR. BRAUTIGAM:

23 Q. Good afternoon, Mr. Winstead. Do
24 you consider yourself to be a fair man?

25 MR. FISCHER: Objection.

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1 or acquirer of stock certain descriptions of
2 the company for that stock. That's my general
3 understanding of what a prospectus is and does.

4 Q. Okay. And that would include the
5 financial statements of the company, correct?

6 A. I don't know that.

7 Q. Do you believe that the financial
8 statements of Provident were included or
9 incorporated by reference in Defendant's
10 Exhibit 1?

11 MS. ROWE: Objection.

12 MR. FISCHER: Objection.

13 MR. MESH: Excuse me a moment.

14 Off the record

15 (Recess for lunch.)

16 MR. BRAUTIGAM: Okay. Back on the
17 record.

18 MR. FISCHER: Before we start, I
19 think Mr. Winstead needs to correct something.
20 I think we were a little confused about one of
21 your questions during the questioning about
22 meetings. Mr. Winstead answered about a
23 meeting in which Mr. Reuter, Mr. Burke, Ms.
24 Rowe, Mr. Matthews, and I forget who else, Mr.
25 Weiss, maybe, were at.

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1 A. Yes.

2 Q. Do you think that the proxy
3 materials that are giving investment advice to
4 the shareholders should be fair?

5 MS. ROWE: Objection.

6 A. As a general and nonlegal
7 statement, yes.

8 Q. Do you think there's a distinction
9 between legal fairness and fairness as it's
10 commonly understood?

11 A. In the context of fairness, I'm
12 not personally aware of any specific legal
13 standard where fair is different than a
14 generally understood concept of fair. Or that
15 doesn't mean that fairness is a term that a
16 court at some point hasn't made a specific
17 determination to as to specific litigation,
18 what is fair and what is unfair.

19 Q. Let me hand you what is --

20 A. That is a lawyer's way of saying
21 there may be circumstances where what is fair
22 and unfair does have a different legal meaning
23 than what would be commonly understood by the
24 term.

25 Q. Okay. Let me hand you what has

27 (Pages 102 to 105)

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1 been previously marked as Plaintiff's
2 Deposition Exhibit Number 1. I ask you to take
3 a look at it. You testified that you had seen
4 an article that perhaps had come from the
5 Cincinnati Business Courier about this
6 litigation. Is this the article that you
7 referred to earlier?

8 A. No. I don't recall having seen
9 this article.

10 Q. Okay. You can take a minute and
11 read it to yourself, at least the sections on
12 this litigation, please? Mr. Winstead, as far
13 as you know, you've never seen or read this
14 article before today, is that correct?

15 A. That is correct.

16 Q. Who is Ken Hanauer with respect to
17 this transaction?

18 A. The information provided in the
19 article you handed me, Ken Hanauer was Oak
20 Hills' CEO.

21 Q. Was he also a director of OHSL?

22 A. I don't recall.

23 Q. Was Mr. Hanauer's opposition to
24 the merger disclosed in Defendant's Exhibit 1,
25 the proxy material and registration statement?

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1 unquote, true?

2 MS. ROWE: Objection.

3 MR. FISCHER: Objection.

4 A. I have no knowledge as to any
5 opposition or any position that Mr. Hanauer
6 took with respect to this merger.

7 Q. Now, you talked earlier about
8 materiality. Do you remember that testimony
9 generally?

10 A. Generally, yes.

11 Q. Do you believe that the opposition
12 of the CEO of the company, who's the largest
13 shareholder, who is the only member of
14 management to be on the Board, the opposition
15 to a merger transaction would be potentially
16 material information?

17 MS. ROWE: Objection.

18 MR. BUCKLEY: Objection.

19 MR. FISCHER: Objection.

20 MS. ROWE: Objection to form.

21 A. Again, in a hypothetical question,
22 anything is going to be related to the facts of
23 a specific transaction, but whether it's
24 material or immaterial would depend upon the
25 transaction. It could be material, it may not

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1 MS. ROWE: Objection.

2 MR. FISCHER: Objection.

3 A. I don't know.

4 Q. Okay. Let me direct your
5 attention to the right-hand column. And it
6 says, Burke's response, quote, Hanauer opposed
7 the Provident takeover because he wanted Oak
8 Hills to remain independent. Do you see that?

9 MR. FISCHER: Objection. There's
10 no quotation mark. Do you see that?

11 MR. FISCHER: I see that --

12 MS. ROWE: I also object because
13 it omits the final sentence of that paragraph.

14 MR. FISCHER: Yes, but also
15 there's no quotation mark. Do you see that?

16 A. I see that language in the
17 article.

18 Q. Is that a true statement?

19 MS. ROWE: Objection.

20 MR. BUCKLEY: Objection.

21 MR. FISCHER: Is what a true
22 statement? Objection.

23 Q. Are the words, quote, Hanauer
24 opposed the provident takeover because he
25 wanted Oak Hills to remain independent,

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1 be material in certain circumstances.

2 Q. Why did you say hypothetical
3 situation?

4 A. Hypothetical in the sense as to
5 whether a CEO's opposition -- to an opposition
6 or in support of is material or immaterial.

7 Q. What about in this case? You
8 worked on the transaction. I think we've
9 established that, correct?

10 MR. FISCHER: Objection.

11 Q. Correct?

12 A. Yes.

13 MR. FISCHER: That's not his
14 testimony.

15 A. I have worked on this transaction.

16 Q. Thank you. And as an attorney
17 working on the transaction, you would be
18 expected to know what materiality is, correct?

19 MR. FISCHER: Objection.

20 MS. ROWE: Objection.

21 A. Materiality would go to specific
22 circumstances, specific legal questions,
23 specific matters. There's not a general
24 materiality concept I would be working with.

25 Q. Okay. How about this specific

28 (Pages 106 to 109)